Hongkong and Shanghai Banking Corporation v Syarikat United Leong Enterprise Sdn Bhd & Anor

HIGH COURT (TAWAU) — SUIT NO T275 OF 1987
IAN HC CHIN JC
15 MAY 1993

Contract *— Guarantee — Past consideration — No further money advanced to defendant after signing of guarantee — Whether guarantee was to secure past advances and was therefore unenforceable — Contracts Act 1950 ss 2(d) & 80*

Contract *— Guarantee — Consideration — Forbearance to sue — Whether plaintiff allowed to prove existence of further consideration*

Banking *— Securities for advances — Guarantee given by director — Past consideration — Whether guarantee enforceable — Contracts Act 1950 ss 2(d) & 80*

Banking *— Security for advances — Guarantee given by director — Undue influence — Burden of proof on person who alleges undue influence — Whether threat of foreclosure amounted to undue influence — Contracts Act 1950 s 16(2) & (3)*

Banking *— Security for advances — Guarantee given by director — Consideration — Forbearance to sue — What is required for claim based on forbearance to succeed — Evidence Act 1950 s 92*

Banking *— Security for advances — Guarantee given by director — Failure to appoint receiver — Whether failure discharges defendant from liability under the guarantee — Whether defendant can complain of the very thing which he had agreed to in the guarantee*

The first defendant, a company in which the second defendant and his wife were directors, was a customer of the plaintiffs. The plaintiffs had granted to the first defendant loans in the form of overdraft and term loan facilities which were secured by charges and debenture. In 1983, the first defendant being unable to repay the loans, requested the plaintiffs to appoint a receiver under the debenture and to sell certain veneer but the plaintiffs did not do so. In June 1985, the plaintiff demanded payment from the first defendant and a year later, the plaintiffs issued a letter dated 22 August 1986 ('exh P6') whereby the plaintiffs agreed to postpone legal action up to three months provided that they were given 'realistic proposals for reduction or liquidation of outstandings and the guarantee of the directors'. A blank guarantee form was sent with exh P6 but there was no response thereto. Two months later, PW1, an advocate of the law firm acting as solicitors for the plaintiff, met with the second defendant at a coffee house and there attested the execution of a guarantee dated 3 October 1986 ('the guarantee') whereby the second defendant stood surety for the first defendant to guarantee payment on demand of sums owing not exceeding the principal sum of RM288,000 together with interest thereon. The debt outstanding under the overdraft was RM61,430.21

as at 4 August 1986 whereas the debt outstanding under the term loan was RM224,748.30 as at 26 August 1986. There was no further advance of money by the plaintiffs to the first defendant after the second defendant had executed the guarantee. By a writ issued on 7 August 1987, the plaintiff sued the defendants for the sum of RM310,875.26. Summary judgment was entered against the first defendant and its counterclaim was dismissed. The present trial concerned the plaintiff's claim against the second defendant. The issues before the court at trial were:

(a) was there consideration for the guarantee;
(b) was undue influence exerted to procure the guarantee;
(c) does the failure of the plaintiffs to appoint a receiver for the first defendant discharge the second defendant from his liability under the guarantee; and
(d) whether the second defendant had agreed to the terms stated in the guarantee.

Held, ordering judgment to be entered for the plaintiffs against the second defendant for RM310,875.26 with interest thereon and costs:

(1) In the case of a guarantee in respect of a loan that had already been disbursed at the time of execution of the guarantee and where no further money was advanced or intended to be advanced after the execution of the guarantee, such guarantee can only be enforceable against the guarantor if the loan was given 'at the desire' of the guarantor; this was a requirement of s 2(d) of the Contracts Act 1950. Past consideration could still be good consideration even if the benefit was not given at the time of the execution of the guarantee in a one-off transaction provided the benefit that was given before the execution of the guarantee was given 'at the desire' of the guarantor. Since the second defendant and his wife were the only directors of the first defendant and thereby stood to benefit from the loan, albeit indirectly, and since the second defendant appeared to be in total charge of the first defendant, the loan, it could be inferred must have been 'at the desire' of the second defendant. That being the case, the defence of past consideration or no consideration failed.

(2) The plaintiffs were allowed to prove the existence of a further consideration but had failed to adduce any evidence that there was any request by the second defendant to the plaintiffs to forbear suing the first defendant. For a claim based on forbearance to succeed, it must be proved by direct evidence or by inference from the circumstances of the case, that the guarantor had requested forbearance and that forbearance was granted.

(3) A party relying on the plea of undue influence would have to show that: (a) the other party had the capacity to influence him; (b) the influence was exercised; (c) its exercise was undue; and (d) its exercise brought about the transaction. The court found that PW1 was not in a position to dominate the will of the second

defendant. On the contrary the forcefulness of the character of the second defendant was demonstrated when he got PW1, an advocate, to go to the coffee house instead of the second defendant going to PW1's office. The second defendant did not say he wanted legal advice or that he needed to be advised. The lack of independent legal advice did not mean that there was undue influence exerted by PW1 on the second defendant. Also, the threat of foreclosure could not amount to undue influence.

(4) The second defendant cannot complain about the failure of the plaintiffs to appoint a receiver in 1983 because such matters had been agreed by him by virtue of cll 6, 7, 11 and 12 of the guarantee.

(5) The court believed the second defendant's testimony to the extent that when he signed the guarantee, it was blank in that the amount of the guarantee, the rate of interest and the date were all left blank and unfilled. The guarantee being signed in blank, in the absence of fraud and misrepresentation, was still valid. There was no doubt as to the quantum under the guarantee, which under cl 1 thereof was all sums of money due on any account of the first defendant.

[Bahasa Malaysia summary

Defendan pertama, sebuah syarikat di mana defendan kedua dan isterinya adalah pengarah, merupakan pelanggan plaintif. Plaintif telah memberikan defendan pertama pinjaman-pinjaman dalam bentuk kemudahan overdraf dan pinjaman bertempoh (term loan) yang dijamin dengan caj dan debentur. Dalam 1983, defendan pertama memandangkan yang ianya tidak berupaya membayar balik pinjaman itu telah meminta plaintif melantik seorang penerima di bawah debentur itu dan menjual sesuatu barangan tertentu tetapi plaintif tidak berbuat demikian. Dalam Jun 1985, plaintif meminta pembayaran daripada defendan pertama dan setahun kemudian, plaintif telah mengeluarkan sepucuk surat bertarikh 22 Ogos 1986 ('eks P6') dengan mana plaintif bersetuju menangguh tindakan guaman sehingga selama tiga bulan sekiranya mereka diberikan 'realistic proposals for reduction or liquidation of outstandings and the guarantee of the directors'. Suatu borang jaminan yang kosong telah dihantar bersama-sama dengan eks P6 tetapi tidak ada jawapan yang diterima. Dua bulan kemudian, PW1, seorang peguambela dalam firma undang-undang yang bertindak sebagai peguamcara bagi plaintif, bertemu dengan defendan kedua di sebuah kedai makan dan di sini mengakusah pelaksanaan suatu jaminan bertarikh 3 Oktober 1986 ('jaminan itu') dengan mana defendan kedua bertindak sebagai penjamin untuk defendan pertama bagi menjamin pembayaran atas tuntutan jumlah-jumlah yang terhutang tidak melampaui jumlah pokok sebanyak RM288,000 bersama dengan bunga di atasnya. Jumlah yang belum diselesaikan di bawah kemudahan overdraf itu adalah RM61,430.21 pada 4 Ogos 1986 sementara jumlah yang belum diselesaikan di bawah pinjaman bertempoh adalah

RM224,748.30 pada 26 Ogos 1986. Tidak ada pendahuluan wang selanjutnya oleh plaintif kepada defendan pertama selepas defendan kedua melaksanakan jaminan itu. Melalui satu writ yang dikeluarkan pada 7 Ogos 1987, plaintif mendakwa defendan untuk jumlah RM310,875.26. Penghakiman terus telah dimasukkan terhadap defendan pertama dan tuntutan balasnya ditolak. Perbicaraan sekarang ini adalah berkaitan dengan tuntutan plaintif terhadap defendan kedua. Isu-isu yang timbul di depan mahkamah adalah:

(a) adakah terdapat balasan untuk jaminan itu;
(b) adakah pengaruh yang tidak berpatutan dilakukan untuk memperolehi jaminan itu;
(c) adakah kegagalan plaintif melantik seorang penerima untuk defendan pertama melepaskan defendan kedua daripada liabiliti di bawah jaminan itu; dan
(d) sama ada defendan kedua mempersetujui syarat-syarat yang dinyatakan di dalam jaminan itu.

Diputuskan, mengarahkan penghakiman dimasukkan untuk plaintif terhadap defendan kedua untuk jumlah RM310,875.26 bersama bunga di atasnya dan kos:

(1) Dalam kes suatu jaminan berkenaan dengan satu pinjaman yang telah didahulukan pada masa pelaksanaan jaminan itu dan di mana tidak ada wang selanjutnya yang didahulukan atau di mana tidak ada tujuan mendahulukan wang selepas pelaksanaan jaminan itu, jaminan sedemikian hanya boleh dikuatkuasakan terhadap penjamin jika pinjaman itu diberikan 'mengikut kehendak' penjamin ('at the desire of the guarantor'); ini adalah apa yang diperuntukkan oleh s 2(d) Akta Kontrak 1950. Balasan lepas masih boleh menjadi balasan yang baik walaupun faedah tidak diberikan pada masa pelaksanaan jaminan itu dalam suatu transaksi serentak, sekiranya faedah yang telah diberikan sebelum pelaksanaan jaminan itu telah diberikan mengikut kehendak penjamin itu. Memandangkan yang defendan kedua dan isterinya adalah pengarah-pengarah tunggal defendan pertama dan lantaran itu patut menerima faedah daripada pinjaman itu, biarpun secara tidak langsung, dan memandangkan yang defendan kedua nampaknya berada dalam pengawalan sepenuhnya defendan pertama, pinjaman itu, ianya boleh diambil kesimpulan, sememangnya mengikut kehendak defendan kedua. Oleh kerana itu, pembelaan balasan lepas atau tidak ada balasan gagal.
(2) Plaintif telah dibenarkan membuktikan adanya balasan selanjutnya tetapi telah gagal menunjukkan sebarang keterangan bahawa terdapat permintaan dari defendan kedua kepada plaintif supaya menahan diri daripada mendakwa defendan pertama. Sebelum satu tuntutan berasaskan penahanan diri (forbearance) boleh berjaya, ianya mesti dibuktikan melalui keterangan terus atau melalui inferens daripada keadaan kes, bahawa penjamin telah meminta penahanan diri itu dan bahawa penahanan diri itu telah diberikan.

(3) Satu pihak yang bergantung kepada pli pengaruh yang tidak berpatutan harus menunjukkan bahawa: (a) pihak yang satu lagi itu berkeupayaan mempengaruhinya; (b) pengaruh itu telah dijalankan; (c) penggunaannya adalah tidak berpatutan; dan (d) penggunaannya itu menghasilkan transaksi itu. Mahkamah mendapati bahawa PW1 tidak berada dalam kedudukan untuk menguasai kemahuan defendan kedua. Sebaliknya kekuatan watak defendan kedua ditunjukkan apabila beliau dapat memanggil PW1, seorang peguam, menemuinya di sebuah kedai makan dan beliau sendiri tidak pergi ke pejabat PW1. Defendan kedua tidak menyatakan bahawa beliau berkehendakkan nasihat undang-undang atau bahawa beliau perlu dinasihati. Tidak adanya nasihat undang-undang yang bebas tidak bermaksud bahawa terdapat pengaruh yang tidak berpatutan yang digunakan oleh PW1 ke atas defendan kedua. Ancaman halang tebus juga tidak boleh dikatakan berjumlah kepada pengaruh yang tidak berpatutan.

(4) Defendan kedua tidak boleh merungut tentang kegagalan plaintif melantik seorang penerima dalam tahun 1983 kerana perkara-perkara tersebut telah dipersetujuinya melalui fasal-fasal 6, 7, 11 dan 12 jaminan itu.

(5) Mahkamah mempercayai keterangan defendan kedua setakat bahawa apabila menandatangani jaminan itu, ianya kosong iaitu jumlah jaminan itu, kadar bunganya dan tarikh kesemuanya ditinggalkan kosong dan tidak dipenuhkan. Penandatanganan jaminan itu dalam bentuk kosong, tanpa penipuan dan salah nyataan, masih sah. Tidak ada keraguan tentang jumlah di bahawa jaminan itu, yang mengikut fasal 1 jaminan itu adalah kesemua jumlah wang yang kena dibayar atas sebarang akaun defendan pertama.]

Notes

For cases on guarantees given by directors, see 1 *Mallal's Digest* (4th Ed) paras 912–917.

For cases on consideration in guarantees, see 3 *Mallal's Digest* (4th Ed) paras 1167–1169.

Cases referred to

1 *Perwira Habib Bank (M) Bhd v Saiyo Sdn Bhd & Ors* [1991] 3 CLJ 1849 (not folld)

2 *Perwira Habib Bank (M) Bhd v Fast Travel (M) Sdn Bhd & Ors* [1988] 3 MLJ 210 (distd)

3 *The Chartered Bank v Cheviot Industries (M) Sdn Bhd & Anor* [1988] 2 CLJ 859 (distd)

4 *Heng Cheng Swee v Bangkok Bank Ltd* [1976] 1 MLJ 267 (distd)

5 *Guthrie Waugh Bhd v Malaippan Muthucumaru* [1972] 1 MLJ 35 (refd)

6 *Pacific & Orient Insurance Co Sdn Bhd v Gimstern Corporation (M) Sdn Bhd & Ors* [1989] 2 CLJ 721 (not folld)

7 *Kalicharan v Abdul Rahman & Ors* AIR 1918 PC 226 (refd)

8 *M Gulam Hussein Khan v M Fayas Ali Khan* AIR 1949 Oudh 346 (refd)
9 *Frith v Frith* [1906] AC 254 (refd)
10 *Osman bin Abdul Ghani & Anor v United Asian Bank Bhd* [1987] 1 CLJ 139 (refd)
11 *Saw Gaik Beow v Cheong Yew Weng & Ors* [1989] 3 MLJ 301 (folld)
12 *Chia Sook Lan, Maria v Bank of China* [1976] 1 MLJ 245 (folld)
13 *Bank Bumiputra Malaysia Bhd v Kredin Sdn Bhd & Anor* [1989] 1 MLJ 323 (folld)
14 *Malaysian French Bank Bhd v Abdullah bin Mohd Yusof & Ors* [1991] 2 MLJ 475 (refd)
15 *Gopal a/l Krishnan v Syed Azman bin Syed Mohd & Anor* [1991] 3 CLJ 1778 (refd)
16 *UMW Industries (1985) Sdn Bhd v Kamaruddin bin Abdullah & Anor* [1989] 2 CLJ 1278 (refd)

Legislation referred to
Contracts Act 1950 ss 2(d), 80

Cecilia Pang (*Peter Lo & Co*) for the plaintiffs.
PK Lim (*PK Lim & Co*) for the second defendant.

Cur Adv Vult

Ian HC Chin JC:

I *The pleadings and issues*

A History

By a writ issued on 7 August 1987 the plaintiffs sue United Leong Enterprise Sdn Bhd ('the first defendant') and Leong Hon Kim @ Andrew ('the second defendant'). The claim against the second defendant is for RM310,875.26 being the money lent to the first defendant and guaranteed by the second defendant. Judgment was upon an O 14 application entered against the first defendant and its counterclaim was dismissed. The trial herein only concerns the plaintiffs' claim against the second defendant. In order to better understand the issues I will first set out the relevant parts of the statement of claim, then the defence and thereafter the reply. The issues will then be summarized.

B Statement of claim

The relevant part of the claim against the second defendant is para 5 which reads:

> By a written guarantee dated 3 October 1986 the second defendant agreed for the consideration therein set out to guarantee the payment on demand of all advances made by the plaintiffs to the first defendant including all interest commission and banking charges thereon.

C Defence

The relevant part of the defence, after taking into account the indication of counsel for the second defendant of the abandonment of certain of them, reads:

...

2 The second defendant denies that he is indebted to the plaintiffs as claimed in para 3 of the plaintiffs' statement of claim or any at all for reasons stated in the following paragraphs.

3 the ... guarantee mentioned in para 5 of the plaintiffs' statement of claim discloses a past consideration on the face of it.

4 There was no consideration moving from the plaintiffs to support the alleged guarantee. Alternatively, the consideration for the alleged guarantee was a past consideration.

5 In the premises, the alleged guarantee was not and is not binding on the second defendant.

6 Further or in the alternative, the second defendant admits that he entered into the alleged guarantee but he was induced to do so by the undue influence of the plaintiffs.

Particulars of undue influence

In October 1986, the plaintiffs through their solicitors insisted that unless the second defendant, as a director for the first defendants signed a letter of guarantee to guarantee the repayment of the banking facilities they would foreclose the securities to secure the banking facilities. Faced with the threat, the second defendant had no choice but to execute the letter of guarantee to guarantee the repayment of the sum of RM288,000 even though at that time the outstanding amount allegedly owed by the first defendants was less.

7 Further or in the alternative, the plaintiffs' loss was self imposed. The banking facilities were secured by a debenture dated 7 July 1982 between the plaintiffs and the first defendants. It was the terms of the debenture that, inter alia, the principal sum and interest shall immediately become payable:

(a) if the first defendant shall make default in the payment of interests or other sum covenanted to be paid whether formally demanded or not;
(b) if the first defendant cease or threaten to cease to carry on its business;
(c) in the event of the above happening to appoint a receiver to take possession of, collect and get in all or any or the first defendants' property so secured and to sell such property and to sell such property and apply the proceeds of sale

(i) towards payment to the plaintiffs; and
(ii) any surplus to the first defendants.

8 In or about November 1983, the plaintiffs through its manager became aware that due to financial problem faced by the first defendants, occasioned by a default of a third party, the first defendants threatened to cease and did cease its business.

9 Despite knowledge of the threat and cessation of business the plaintiffs negligently failed to discharge its duties under the debenture, by appointing a receiver to take possession of and sell the first defendants' assets so secured which at all material times comprised plant and machinery for making green

veneer costing US$200,000 and a large quantity of green veneer ready for export costing at the material time US$586,432.60 respectively. A

Particulars of negligence

In or about November 1983, the first defendants through its director, Dr Leong Hon Kim informed the plaintiffs' manager that first defendants could not overcome its financial problem and had to give up its business venture. B Under the terms of the debenture, the plaintiffs had a duty to appoint a receiver to take possession of and sell the first defendants' assets which at the material time comprised of plant and machinery for manufacturing green veneer costing US$200,000 and 4,511.02 cubic meter of processed and ready for export Malaysian green veneer costing at US$586,423 calculated at US$130 cubic meter. The green veneer became rotten and has C since perished. The machinery and plant became unserviceable.

10 Had the plaintiffs taken action under the debenture, the proceeds of sale of the plant and machinery and green veneer would be sufficient to extinguish whatever the outstanding banking facilities of the first defendants.

...

13 Save as hereinbefore expressly admitted, the [second] defendants deny each D and every allegation in the statement of claim as though the same were herein specifically set forth and traversed seriatim.

D Reply

The plaintiffs' reply to the defence of the second defendant is in the E following words, reproducing only the relevant part:

...

4 The plaintiffs do not admit para 6 of the defence. The plaintiffs say that the guarantee was given by the first defendants willingly of which he was a director and shareholder. The plaintiffs did threaten to issue legal proceedings F against the first defendants by way of notices of demand through their solicitors, Messrs Chong & Pang, but they deny that they used any undue influence as alleged or any at all. On 23 August 1986, the second defendant called at the plaintiffs' bank and requested forbearance from the bank for legal action to be taken against the first defendants. The plaintiffs did accede to such request and confirmed on the same day in writing to postpone any G action against the first defendant for a period not exceeding three months provided a guarantee should be executed by the director. On 3 October 1987 the guarantee was executed by the second defendant. The guarantee was given for the benefit of the first defendants, of which the second defendant is a director and shareholder, time arrange for payment of the debt. Since then no action was taken by the plaintiffs against the first H defendants for more than three months. In the aforesaid premises, there was and still is a valid consideration for the guarantee.

...

The pleading of forbearance appears to be a departure from the statement of claim but no objection was at any time taken to the pleading and the I court will take it that forbearance has been pleaded as forming part of the consideration for the guarantee.

E Issues

There was some initial confusion as to what are the issues that have to be tried. Counsel for the plaintiffs at first maintained that only two issues are triable and they are: (1) whether a demand for payment was made; and (2) whether the guarantee was void for lack of consideration. This proposition is based on the fact that Dato' Hj Mohamad Noor Hj Ahmad J had in his grounds of decision (dated 23 August 1990), when granting leave to the second defendant to defend, after dismissing the application of the plaintiffs for summary judgment, concluded that the two aforesaid triable issues have been raised by the second defendant; there were, according to the said learned judge, three other issues advanced and these were: (1) whether undue influence was exerted; (2) whether there was negligence on the part of the plaintiffs in not appointing a receiver under a debenture; and (3) whether there was trespass when the plaintiffs failed to return certain land titles to the second defendant — all of which he found not to be triable issues. The issue of trespass was abandoned by counsel for the second defendant during the trial. The question then is the second defendant shut out from pursuing the said issues of undue influence and negligence? I am of the opinion that the second defendant is not. What the learned judge had ordered was that the application of the plaintiffs for summary judgment be dismissed and he did not order any part of the defence of the second defendant be struck out. Therefore the whole of the defence of the second defendant remains and the issues raised by the defence remain triable except for those which the second defendant had chosen to abandon. Therefore, the issues in this case are:

(1) was there consideration for the guarantee dated 3 October 1986;
(2) was undue influence exerted to procure the guarantee;
(3) does the failure of the plaintiffs to appoint a receiver for the first defendant discharge the second defendant from his liability under the guarantee; and
(4) whether the second defendant had agreed to the terms stated in the guarantee (exh P4).

II *Evidence of case*

The first defendant, of which the second defendant and his wife were directors, was a customer of the plaintiffs. Loans, one an overdraft (under account no 396–017055–001) and the other a term loan (under account no 396–017055–034), were given by the plaintiffs to the first defendant for which under the overdraft the first defendant owed the plaintiffs the sum of RM61,430.21 as at 4 August 1986 whereas the amount outstanding under the term loan was as at 26 August 1986, RM224,748.30. These loans were secured by charges and debenture. The first defendant was unable to repay the loans as far back as 1983. The first defendant had demanded that the plaintiffs appoint a receiver under the debenture and to sell certain veneer but the plaintiffs did not do so. In June 1985, the plaintiffs had demanded

payment from the first defendant (see exh D1). Those are the undisputed facts. No evidence was led by either sides as to what happened in between June 1985 and July 1986. What followed was a letter dated 22 August 1986 (exh P6) which was allegedly issued by the plaintiffs and signed by a DRD Hutcheson. The area of disputes commenced from there. Exhibit P6 reads:

22 August 1986

The Managing Director
Syarikat United Leong Enterprise Sdn Bhd
P O Box 57
91007 Tawau

Attn: Dr Leong Hon Kim

Dear Sir

We refer to our discussion of this afternoon regarding the letter of demand issued by our lawyers. We confirm that we will be agreeable to postponing any action for a period of a few months but in any event not exceeding three months provided we are given realistic proposals for the reduction or liquidation of outstandings and the guarantee of the directors.

In this connection, we enclose herewith a blank guarantee form which should be completed in front of our lawyers, Messrs Chong & Pang and return to us in due course.

Yours faithfully
—Sgd—
DRD Hutcheson
Manager
Enc
ry

cc Messrs Chong & Pang
Tawau

This letter (exh P6) was admitted without objection from the second defendant but the second defendant in his evidence said that though he did receive exh P6 he denied meeting a DRD Hutcheson, that he did not know the person and that he never ask for action not to be taken. He also said he cannot recall receiving the blank guarantees that was sent with exh P6. The plaintiffs called one of its officer PW2. In examination-in-chief, she said exh P6 was sent together with a blank guarantee and that a guarantee, exh P4, was thereafter returned to the plaintiffs by the law firm of Chong & Pang. Under cross-examination she said she cannot remember who despatched exh P6 and she cannot remember seeing the blank guarantee form being despatched with exh P6.

The events take us to the guarantee, exh P4, which is dated 3 October 1986 ('the guarantee'), upon which the plaintiffs based its claim against the second defendant. With regards thereto, PW1's, an advocate of the firm of Chong & Pang, testimony is as follows:

> The guarantee was signed in my presence in Royal Hotel coffee house ... Exhibit P4 signed in my presence. I did explain to the second defendant the purpose of

A the guarantee. I explained the purpose of signing the guarantee to the second defendant. I relayed the instructions of Hongkong & Shanghai Banking Corporation to the second defendant. At the time of signing of the exh P4 by the second defendant, exh P4 was already completed. I explained to the second defendant that exh P4 was for forbearance on the part of the bank to take legal action against the defendant for money owed to the bank. After I have explained B the second defendant signed exh P4...

That was all that was said with regards to the guarantee when PW1 gave evidence-in-chief. Under cross-examination, he denied the guarantee was without the relevant particulars before the second defendant executed the same and he denied having ever called the second defendant or his wife C regarding the execution of the guarantee. In re-examination he said:

> The figures for the exhs P4 ... were inserted by my firm. I cannot remember how exhs P4 ... came to my firm's possession before they were signed...

The second defendant in his evidence said he received exh P6 but he did D not meet a Hutcheson, the alleged signatory of exh P6. He denied having asked the plaintiffs not to take action against the first defendant or against him. As for the Royal Hotel coffee house meeting with PW1, he said it was PW1 who called him over the phone and asked him to go to PW1's office but that he instead asked PW1 to join him at the said coffee house where he was going. When he reached the said coffee house, PW1 was already E there. After ordering their drinks, PW1 took out two blank guarantees and requested him to sign while promising that he (PW1) would assist him to talk to the bank not to take legal action against his company and the securities. PW1 also, according to him, said signing the guarantee was for his own good and benefit and that if he signed, his wife would not be asked F to sign. He finally relented and signed the guarantees, one of which is exh P4 but he said that when he signed the guarantee, the various places for insertions of the amount of the guarantee, the rate of interest and the date were all left blank or unfilled. The relevant clauses of the guarantee, for ease of reference, are reproduced here:

G 1 In consideration of your making or continuing advances or otherwise giving credit or affording banking facilities (including, inter alia, the issue of guarantees by you and your acceptance of guarantees by the principal as hereinafter defined in favour of third parties) for as long as you shall think fit to Syk United Leong Enterprise Sdn Bhd (hereinafter called 'the principal') we, the undersigned, hereby agree to pay to you on demand all sums of money which are now or shall at any time be owing to you anywhere on any H account whatsoever whether from the principal solely ... Provided always that the joint and several liability ultimately enforceable against us shall not exceed the principal sum of RM288,000 ... together with interest...

...

6 You shall be at liberty without thereby affecting your rights against us hereunder and without notice to us and without our assent or knowledge at I any time to determine enlarge or vary any credit to the principal to vary exchange abstain from perfecting or release any other securities held or to be held by you for or on account of the money intended to be hereby secured or any part thereof to renew bills and promissory notes in any manner and to compound give time for payment to accept compositions from and make

any other arrangements with the principal or any obligants on bills, notes or other securities held or to be held by you for and on behalf of the principal and no act or omission on your part which, but for this provision, might operate so as to exonerate us or any of us or any other person or which would not have discharged or affected our liability, had we been principal debtor instead of guarantor, shall in any way exonerate us or any such person or discharge or diminish the validity of this guarantee or our liability hereunder.

7 The guarantee shall be in addition to and shall not be in any way prejudiced or affected by any collateral or other security now or hereafter held by you for all or any part of the money hereby guaranteed nor shall such collateral or other security or any lien to which you may be otherwise entitled or the liability of any person or persons not parties hereto for all or any part of the monies hereby secured be in any way wise prejudiced or affected by this guarantee. And you shall have full power at your discretion to give time for payment to or make any other arrangement with any such other person or persons without prejudice to this guarantee or any liability hereunder. And all money received by you from us or the principal or any other person or persons liable to pay the same may be applied to you to any account or items of account or to any transaction to which the same may be applicable

...

11 Our liability shall not be affected by the absence of or by any defective, excessive or irregular exercise of the borrowing powers of the principal (if a company or companies) or by the principal being an infant or being under any other disability or by an association or other unincorporated body not having a legal existence being named as principal or by any other fact or circumstance (whether known or not known to you and to any one or more of us) as a result of which any indebtedness or liability incurred or purported to be incurred by the principal or by any other person purporting to act on behalf of the principal is void or unenforceable by you against the principal and we agree that in any case we shall be liable to you as principal debtor(s) and by way of an indemnity for the same amount as that for which we would have been liable by way of guarantee had a valid and enforceable indebtedness or liability as between the principal and you been created.

12 This guarantee shall be in addition to and not in substitution for any other guarantee for the principal given by all or any of us to you.

...

There was no further advance of moneys by the plaintiffs to the first defendant after the second defendant had executed the guarantee.

III *The contentions, finding of facts & conclusions*

A Consideration

The second defendant contends that since no further money whatsoever was advanced by the plaintiffs to the first defendant at the date or after the signing of the guarantee, the guarantee was actually to secure past advances and therefore was for a past consideration and unenforceable. Counsel for the second defendant referred extensively to Low Kee Yang on *The Law of Guarantees in Singapore and Malaysia* and to p 65, where the said author, in relation to past consideration and the Contracts Act 1950, says:

... the question of whether past consideration is valid consideration for a guarantee is again a question of the inter-relation of ss 2(d) and 80.

Indian case law is as divided on the issue of whether past consideration is good consideration for a guarantee as Malaysian case law is silent. One view is that the word 'done' (in s 80) shows that past benefit to the principal debtor can be good consideration for a guarantee. The contrary view is that the act done or the promise made must be contemporaneous with the guarantee. Both the cases supporting the proposition that past consideration is good consideration were in fact referred to by Sharma J in *Guthrie Waugh v Muthucumaru* [1972] 1 MLJ 35 at p 41, but whether he approved of them is not at all clear from the context.

It is submitted that, as with the question of direction of consideration, the real issue is whether s 80 should be read in conjunction with and ancillary to s 2(d), and that the answer should be in the affirmative. Past consideration is permissible under s 80 only in so far as it is permissible under s 2(d), that is, if it was done at the desire of the surety; otherwise it is not good consideration.

The two sections of the Contracts Act 1950, ss 2(d) and 80, referred to in the just quoted passage are for ease of reference reproduced here:

2 In this Act the following words and expressions are used in the following senses, unless a contrary intention appears from the context:

...

(d) when, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise;

...

80 Anything arise, or any promise made, for the benefit of the principal debtor may be a sufficient consideration to the surety for giving the guarantee.

Illustrations

(a) B requests A to sell and deliver to him goods on credit. A agrees to do so, provided C will guarantee the payment of the price of the goods. C promises to guarantee the payment in consideration of A's promise to deliver the goods. This is a sufficient consideration for C's promise.

(b) A sells and delivers goods to B. C afterwards requests A to forbear to sue B for the debt for a year, and promises that, if he does so, C will pay for them in default of payment by B. A agrees to forbear as requested. This is sufficient consideration for C's promise.

(c) A sells and delivers goods to B. C afterwards, without consideration agrees to pay for them in default of B. The agreement is void.

It is apparent from what have been cited by counsel for the second defendant that it cannot be successfully maintained that past consideration cannot be good consideration. This will be dealt with in more details after adverting to other authorities.

Counsel for the plaintiffs referred to the cases of (1) *Perwira Habib Bank (M) Bhd v Saiyo Sdn Bhd & Ors*;[1] (2) *Perwira Habib Bank (M)Bhd v Fast Travel (M) Sdn Bhd & Ors*;[2] (3) *The Chartered Bank v Cheviot Industries (M) Sdn Bhd & Anor*[3] and (4) *Heng Cheng Swee v Bangkok Bank Ltd*[4] and argued that those cases are decisive for the plaintiffs but counsel for the plaintiffs never advert to the fact that, in the present case, no money was advanced after the execution of the guarantee. Cases (2), (3) and (4), I am

of the opinion, are of no help because they involved the dispensation of the moneys guaranteed both before and after the signing of the guarantees. Of relevance is the case (1), that is *Perwira Habib Bank (M) Bhd v Saiyo Sdn Bhd & Ors*,[1] where a loan of RM2m was disbursed in full in December 1982 and the guarantee for the loan was only executed on 7 September 1983. Zakaria Yatim J in that case held, relying on *Heng Cheng Swee v Bangkok Bank Ltd*,[4] that there was good consideration even though the loan was disbursed before the execution of the guarantee because the guarantee is a continuing guarantee, and as for the illustration (c) of s 80 of the Contracts Act 1950, he held that it 'does not apply ... because the situation here is different from that envisaged in illustration (c)'.

There are two other cases of relevance. One is *Guthrie Waugh Bhd v Malaippan Muthucumaru*,[5] a decision of Sharma J, where he at p 39 says:

> ... to constitute good consideration ... there must be an act, abstinence or promise on the part of the promisee or some other person at the desire of the promisor. The claim can only be good if the promisee acts, abstains or promises to do something in pursuance of the promise... The Contracts (Malay States) Ordinance 1950 clearly recognizes past consideration (see ss 26(b) and 2(d)). The words in cl 2(d) of s 2 'has done or abstained from doing' sufficiently indicate this.

The other case is *Pacific & Orient Insurance Co Sdn Bhd v Gimstern Corporation (M) Sdn Bhd & Ors*[6] where Mahadev Shankar J, after considering the cases of *Kalicharan v Abdul Rahman & Ors*[7] and *M Gulam Hussein Khan v M Fayas Ali Khan*,[8] held that a past benefit to the principal debtor can be a good consideration and, after considering the illustration (c) of s 80 of the Contracts Act 1950, he also held that in a one-off transaction, the benefit must be given either at the time of the execution of the guarantee or in future but not a past benefit.

The decision of *Perwira Habib Bank (M) Bhd v Saiyo Sdn Bhd & Ors* case[1] and that of the earlier case of *Pacific & Orient Insurance Co Sdn Bhd v Gimstern Corporation (M) Sdn Bhd & Ors*,[6] as regards whether past consideration is good consideration for a guarantee in a one-off transaction, appears to conflict with each other. *Perwira Habib Bank (M) Bhd v Saiyo Sdn Bhd & Ors*[1] appears to me to decide, simpliciter, or it at least follows, that anyone who put his signature to any guarantee in respect of a loan already disbursed, and where the wording in the guarantee are wide enough to cover loans already disbursed, will be liable, irrespective of whether the loan was given at the guarantor's 'desire', irrespective of whether there was at the request of the guarantor forbearance by the creditor to sue and irrespective of whether any further advances were made after the execution of the guarantee. The said decision appears to dispense with the requirement that the 'something done' (the loan) must be 'at the desire' of the guarantor as laid down in s 2(d) of the Contracts Act 1950. Such a result, as that of *Perwira Habib Bank (M) Bhd v Saiyo Sdn Bhd & Ors*,[1] cannot be what the law had intended. I therefore, respectfully, decline to follow *Perwira Habib Bank (M) Bhd v Saiyo Sdn Bhd & Ors*.[1] I am of the view that in the case of a guarantee in respect of a loan that had already been disbursed at the time of the execution of the guarantee and where no further money was advanced

or intended to be advanced after the execution of the guarantee, such guarantee can only be enforceable against the guarantor if the loan was given at the 'desire' of the guarantor; this is a requirement of s 2(d) of the Contracts Act 1950. I also respectfully differ from *Pacific & Orient Insurance Co Sdn Bhd v Gimstern Corporation (M) Sdn Bhd & Ors*[6] in so far as that case decides that past consideration, in an one-off transaction, is not good consideration unless given at the time of the execution of the guarantee because I am of the opinion that past consideration can still be good consideration even if the benefit was not given at the time of the execution of the guarantee in a one-off transaction provided the benefit that was given before the execution of the guarantee was given 'at the desire' of the guarantor, for example, where the loan was applied for by or released at the request of the guarantor for which, subsequently, a guarantee was signed; such a guarantee though for past consideration and the benefit though not given at the time of the execution is still good consideration for the guarantee. With that decision, I will now, again, advert to the evidence in this case and to the submissions of counsel. Given what I have said, I cannot accept the contention of counsel for the second defendant that because the guarantee was for a past consideration, the guarantee is not enforceable. The authorities and ss 2(d) and 80 of the Contracts Act 1950 I have referred to clearly lay down that past consideration can be a good consideration for a guarantee provided that, in a one-off transaction like the present case, the benefit, in this case the loan, given to the principal debtor must have been 'at the desire' of the guarantor. Since the court was not addressed by counsel for the second defendant on the question of whether the loan in this case given to the first defendant was 'at the desire' of the second defendant, the court will assume that it is not an issue. Even if that had been an issue, I would have no difficulty in coming to the conclusion that, since the second defendant and his wife are the only directors of the first defendant and thereby stood to benefit from the loan, albeit indirectly, and since the second defendant from the letters produced in court appeared to be in total charge of the first defendant, the loan, it could be inferred, must have been 'at the desire' of the second defendant. That being the case, the defence of past consideration or no consideration fails.

It was also argued that the plaintiffs are not allowed to say that there was consideration in the form of forbearance to sue because of s 92 of the Evidence Act 1950. The answer to that submission is in the case of *Frith v Frith*,[9] at p 259, where it is said:

> The rule is that where there is one consideration stated in the deed, you may prove any other consideration which existed, not in contradiction to the instrument; and it is not in contradiction to the instrument to prove a larger consideration than that which is stated.

That case was cited with approval in *Guthrie Waugh Bhd v Malaippan Muthucumaru*.[5] A further answer is found in *Heng Cheng Swee v Bangkok Bank Ltd* case[4] where, at p 268, it says:

> In the words of Lord Lyndhurst LC in *Clifford v Turrell* (1845) 14 LJ Ch 390 at p 397 : '... the settled rule of law is that you may prove a further consideration

stated on the face of the deed. You cannot be allowed to prove a consideration inconsistent with it, but you may prove another which stands with it.'

The plaintiffs are therefore allowed to prove the existence of a further consideration. But my finding is that the plaintiffs have failed to do so. The plaintiffs have failed to adduce any evidence that there was any request by the second defendant to the plaintiffs to forbear suing the first defendant. But first to the law. The words 'abstinence' and 'forbearance', respectively, in s 2(d) and in illustration (b) of s 80 of the Contracts Act 1950, provide for forbearance to be a consideration for a guarantee. For a claim based on forbearance to succeed, it must be proved, by direct evidence or by inference from the circumstances of the case, that the guarantor had requested forbearance and that forbearance was granted. See *Osman bin Abdul Ghani & Anor v United Asian Bank Bhd.*[10] There was no evidence that the second defendant had written to the plaintiffs to ask for action not to be taken against the first defendant. What the plaintiffs had done was to produce the letter exh P6, the contents of which I have earlier set out in full. This exh P6 is not evidence of the second defendant having requested forbearance. At most it was an offer by the plaintiffs to forbear subject to their being 'given realistic proposals for the reduction or liquidation of outstandings and the guarantee of the directors'. As for the evidence of PW1, the advocate who acted for the bank, he merely testified that he had explained to the second defendant the guarantee was for forbearance on the part of the bank to take legal action against the first defendant for money owed to the bank. That evidence cannot be proof, as alleged in the plaintiffs' reply, that on the '23 August 1986, the second defendant called at the plaintiffs' bank and requested forbearance from the bank for legal action to be taken against the first defendants'. There is a total failure to prove that the second defendant on 23 August 1986 or at any time requested forbearance. Counsel for the plaintiffs must have conceded this point because she did not reply at all, concerning this point, to the submission of counsel for the second defendant. If the plaintiffs' claim had to rely solely on forbearance, the plaintiffs would have failed in its claim. I will now proceed to deal with the next issue.

B Undue influence

The undue influence which the second defendant had pleaded was that the plaintiffs' solicitors 'insisted that unless the second defendant, as a director for the first defendants signed a letter of guarantee to guarantee the repayment of the banking facilities they would foreclose the securities to secure the banking facilities'. The second defendant further pleaded that: 'Faced with the threat, the second defendant had no choice but to execute the letter of guarantee to guarantee the repayment of the sum of RM288,000 even though at that time the outstanding amount allegedly owed by the first defendants was less'. I would for almost the same reasons as that given by Dato Hj Mohamad Noor Hj Ahmad J dismiss the defence of undue influence. It is convenient here to recap the evidence of the second defendant regarding the meeting in the coffee house where it was alleged that PW1 had exerted

undue influence on him. It will be recalled that the second defendant was able to get PW1 to meet him in the coffee house instead of PW1's office. Since his evidence is quite short in this regard, I reproduce them here:

> PW1 called me over the phone. He asked me to go to his office. He did not mention about the guarantee. I told him that I was going to the coffee house which was in the same block of building and I told him that if he wished he could join me and have coffee. He then said he will come. I went immediately. When I arrived PW1 was already in the coffee house. We ordered coffee and drank. He then took out two blank guarantee forms and asked me to sign. He asked if I sign he could assist me to talk to the bank not to take legal action against my company and that of the securities. At first I did not agree but he insisted saying it was for my own good. I told him I cannot sign because I had to consult my wife, the other director of the company. He told me that there is no need to consult my wife and that if I sign it he would not ask my wife to sign the guarantee. I asked him what the guarantee were for and he said the guarantee were only for the purpose of the bank record. I still maintain I will not sign because the guarantees involve my company accounts and I did not bring the seal of the company. I thought the seals and company chop of the company were required for the guarantees. He told me that there was no need for that. He told me that they were for my benefit and own good and that the bank would not take any legal action against my company and the properties. I asked PW1 to give me time to consider the signing of the guarantees. He said there was no need to consider, so I had no alternative and I trusted him as a friend and I signed the guarantees...

The second defendant struck me as quite an articulate person. He was unhurried in his response to questions and he was calmed and collected in giving his evidence; mostly after going through his file of documents. He is not a person who could be pushed into doing something against his will. That the second defendant is such a person is demonstrated by a letter (exh D4) the second defendant wrote, in response to a request in a letter by the manager of the plaintiffs (exh D3) for him to call on the manager. He said in this letter (exh D4): 'Having tried my utmost and failed to solve the problem, I am now giving up trying. An aversion to the whole thing seems to have developed. If you have a solution that can be wrapped up in a few words, please convey it to me so. (Sgd) Dr Andrew Leong Hon Kim, ADK'. He was virtually asking the manager to see him and not the other way round. Such was the forcefulness of the character of the second defendant. This character, that is its forcefulness, was further demonstrated when he got PW1, an advocate, to go to the coffee house instead of him going to PW1's office. He had two months to ponder whether to sign the guarantee. Though I accept most of his evidence as being the truth, there are certain aspects of his evidence which are inherently improbable. The second defendant gave evidence that the guarantee was not mentioned at all when PW1 allegedly phoned him which resulted in his asking PW1 to join him at the coffee house. If PW1 did not mention the guarantee, why was there that need to see PW1 at the coffee house. The truth of the matter is the meeting at the coffee house was for the sole purpose of the execution of the guarantee. The second defendant knew very well that he had to sign the guarantee (and another one which we are not concerned with). By his own

admission he had been told of the need to sign the guarantee by the bank staff several times. What happened in the coffee house came as no surprise to the second defendant. He knew he was going there in connection with the execution of the guarantee. In fact he admitted he knew about it after he had received the letter exh P6. Given those facts, it could not be true that the second defendant was totally unprepared for the coffee house meeting and it is equally untrue that he was there faced with the guarantee for the first time and without sufficient time to consider the same. I do not see how PW1 could influence the second defendant when PW1 had to go to the coffee house as the second defendant wished. I believe PW1 when he said he did not tell the second defendant that: (1) the guarantee exh P4 was for the record of the bank; and (2) he would tell the bank not to take action against the second defendant. It should be noted that there is no evidence as to how long the second defendant was at the coffee house before he signed the guarantee. I will now set out the law on undue influence which has been succinctly stated by Edgar Joseph Jr J (as he then was) in the case of *Saw Gaik Beow v Cheong Yew Weng & Ors*,[11] and at p 308, he says:

> ... quite apart from the question of manifest disadvantage, a party relying on the plea of undue influence would have to show that: (a) the other party had the capacity to influence him; (b) the influence was exercised; (c) its exercise was undue; and (d) that its exercise brought about the transaction (see *Bank of Credit & Commerce & Anor v Aboody* [1989] 2 MLJ 759).

As for the burden of proof in cases where a person is deemed, under s 16(2) of the Contracts Act 1950, to be in a position to dominate the will of another, s 16(3) of the Contracts Act 1950 provides for the dominating person to prove that the contract was not induced by undue influence. In all other cases, the burden rests with the person who alleges undue influence, which in this case is with the second defendant, as the deeming provision of s 16(2) of the Contracts Act 1950 does not apply here. Given my finding as to the character of the second defendant which I have hitherto set out and as regards the events in the coffee house, it is my conclusion that PW1 was not in a position to dominate the will of the second defendant. The converse is the truth. A certain span of time is required to work an influence on a person. In this case there is no evidence as to that. The second defendant appears to be a man of letter, judging by the 'Dr' he used but in any event he appears to me to be a man wise of the world. That he is able to conduct the trial of this case on his own lends support to my description of him. If he had wanted a lawyer before he signed the guarantee, he would have asked for one. He did not say he wanted one or that he needed to be advised. There is therefore no merit in the contention of counsel for the second defendant that the second defendant ought to have independent legal advice. The lack of such does not mean that there was undue influence exerted by PW1 on the second defendant. In any event the second defendant knew months in advance the need to sign the guarantee. Therefore the second defendant has failed to prove undue influence. There are other allegations of the second defendant tending to show that there was misrepresentation on the part of PW1. Since the second defendant's defence is not based on misrepresentation, I will not deal with them as they are in

issue and are therefore irrelevant. As for the threat of foreclosures, it was held in the case of *Chia Sook Lan, Maria v Bank of China*[12] that such could not amount to undue influence. To the next issue I will now go.

C Failure to appoint receiver

The failure to appoint a receiver related to the period in 1983 where the second defendant went to see the manager of the plaintiffs to appoint a receiver under a debenture and dispose of the stock of veneer and this was not done with the result that the stock of veneer had rotted. The court was referred to s 92 of the Contracts Act 1950, and to the said text of the author Low Kee Yang, at p 162. But the said author at p 162 said this: 'A surety is also not discharged if by a clause in the guarantee, he had agreed to the creditor dealing with the security in the manner complained of'. Counsel for the plaintiffs referred to cll 6, 7, 11 and 12 of the guarantee, which I have earlier reproduced, and said that the second defendant cannot complain about the very thing which he had agreed by the said cll 6, 7, 11 and 12. I agree with her submission. A somewhat similar situation pertains in the case of *Bank Bumiputra Malaysia Bhd v Kredin Sdn Bhd & Anor*[13] and it was held in that case by VC George J that such a defence had no merit. I am also of the same view. With that I have come to the last of the issues.

D Whether the second defendant had agreed to the terms of the guarantee exh P4

Counsel for the second defendant submitted that the plaintiffs must prove the second defendant had agreed to all the terms stated in the guarantee (exh P4) because the second defendant had executed the guarantee (exh P4) in blank, that is, the 'RM288,000' limit of liability and the interest rate were not stated at the time the second defendant executed the guarantee (exh P4). I will again first advert to the relevant evidence. Two blank guarantees were allegedly forwarded to the second defendant vide the letter (exh P6); 'blank' in the sense I have earlier used. PW1 testified that the figures in the guarantee were inserted by his law firm after the same were supplied by the bank and before the second defendant had signed the same. He cannot remember how the guarantee came to be in his firm's possession. He produced no letter from the plaintiffs to back up his allegation that he was supplied the figures by the plaintiffs and PW2, an officer of the plaintiffs, did not corroborate his evidence. At the very least, if the particulars for the guarantee were supplied orally by someone working for the plaintiffs to someone in the law firm of PW1, the information must have been reduced into writing by that someone in the legal firm. Such evidence, which surely must exist if the particulars were supplied orally, was not produced in court. If the particulars were supplied in the form of a letter, then PW1 and PW2 have failed to produce the same. The result of such failure is that I am inclined to believe the second defendant that when he signed the guarantee it was blank in the said sense I have said earlier. This is even more so when one takes into account the fact that the limit of liability to be inserted in the guarantee depended on when the second

defendant signed the guarantee; the later he signed, the higher would be the limit of the liability and hence the guarantee was most probably signed in blank. What then is the result of the guarantee being signed in blank? The guarantee, in the absence of fraud and misrepresentation, is still valid. See *Malaysian French Bank Bhd v Abdullah bin Mohd Yusof & Ors*;[14] *Gopal a/l Krishnan v Syed Azman bin Syed Mohd & Anor*[15] and *UMW Industries (1985) Sdn Bhd v Kamaruddin bin Abdullah & Anor*.[16] Therefore, contrary to what has been submitted by counsel for the second defendant, there is no doubt as to the quantum under the guarantee and it is spelt out in cl 1 of the guarantee and which is — all sums of money due on any account of the first defendant; this includes the moneys due under the term loan account no 396–017055–034 and under the overdraft account no 396–017055–001. This defence also fails.

E Conclusion

In the premises I order judgment to be entered for the plaintiffs against the second defendant for the sum of RM310,875.26 together with interest thereon at the rate of 9.75%pa from 14 July 1987 until full payment. I also order costs to be taxed and to be paid by the second defendant to the plaintiffs.

Order accordingly.

Reported by Yap Foo Ken